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VENEZUELA

The following is a brief summary of the major developments in Venezuelan law affecting foreign trade and investments.

I. RECADI AND THE DECREE 61 COMMISSION

As announced by President Lusinchi in New York on September 22, 1984, Venezuela has reached agreement with the foreign banks' negotiating committee on terms for restructuring the country's public sector debt. No formal document has yet been signed because an important condition of such refinancing is that the Government resolve the problem of the private sector debt in a timely and acceptable manner.

At the end of October 1984, another 90-day deferral of public sector maturities was requested and obtained. There has been a flurry of activity by Recadi and the Decree 61 Commission in processing and approving (or disapproving) interim interest applications and definitive debt registrations. On November 5, 1984, Recadi published the names of numerous companies whose applications had been selected for debt registration processing. In order to avoid a deluge of inquiries from interested parties as to the status of such applications, Recadi limited contact with the parties to governmental initiation. The next day almost two pages of names were published in the Caracas newspapers indicating approval for interim interest payments to various foreign banks pursuant to Decree 96. The actual number of final decisions as to debt registration or denial by the Decree 61 Commission has been minimal.

Recadi and the Decree 61 Commission rejected registration of trade debts more than 45 days overdue on February 18, 1983 (the date of imposition of exchange controls). Various companies have received a definitive resolution on this point. Because no administrative appeal is permitted by the Venezuelan exchange control legislation, the only recourse of a debtor whose application is denied under the 45-day rule is to the Venezuelan Supreme Court. Meanwhile, pursuant to an amendment to the Central Bank/Ministry of Finance exchange agreement published in the Official Gazette of September 10, the successful applicant has only 45 days within which to sign the exchange agreement permitting future

purchases of dollars at preferential rates. Conceivably, a trade debtor whose application has been denied in part and accepted in part might find himself in a dilemma as to whether to accept the resolution and sign up with the Central Bank for the part approved, or appeal from the resolution to the Venezuelan Supreme Court.

II. LIMITATIONS ON IMPORTING

The number of items entitled to be imported at the preferential rate of Bs. 4.3: U.S.\$ 1 was further reduced by two new Ministry of Finance resolutions published November 2, 1984. By an October resolution, both the Ministry of Development and the Ministry of Agriculture were authorized to fix quotas for food imports, as well as maximum prices to be paid with preferential dollars.

III. REDUCED VENEZUELAN PETROLEUM EARNINGS

Venezuela's dollar-earning capacity was adversely affected by the further reduction in its OPEC oil production quota by 120,000 barrels a day beginning the end of October and the announced shutdown of Exxon's Aruba refinery. Although it is hoped that oil prices will firm up, the Ministry of Finance immediately announced a reduction in the budget of Bs. 899 million.

To compensate for its reduced petroleum earnings, Venezuela is embarking upon an ambitious program to stimulate non-traditional exports with seminars in Venezuela and one planned by the Venezuelan Consulate, to be held in New York. The Asociación Venezolana de Exportadores (AVEX) has been advocating a "one-window" approach for export permits in lieu of the present cumbersome procedure required of many exporters. Potential exporters must also carefully review the added national value requirements for qualification for export benefits, as well as the Central Bank requirement that export dollars be sold to the Bank at the preferential exchange rate to the extent that imported components or raw materials may have been utilized in the exported product.

IV. PROPOSED DECREE MODIFYING FOREIGN INVESTMENT RESTRICTIONS

The Superintendent of Foreign Investments (SIEX) has

presented to the Ministry of Finance a proposed decree which would modify certain of the foreign investment restrictions currently prevailing in Venezuela. The most important feature permits the re-registration of the foreign investment legislation and SIEX interpretations into a single decree. Provisions relating to technology agreements would be greatly simplified. Technology transfer contracts which are gratuitous transfers (e.g., royalty-free trademark agreements between affiliates) would not require the prior approval of SIEX. Distribution agreements covering trademarked items would not have to be registered, and the term "occasional services" would be defined. The draft decree also specifically contemplates the capitalization of foreign debt with prior SIEX approval.

V. PRICE CONTROLS: DECREE 327

New price control rules went into effect in early November. The so-called SAP system was phased out, and the Comisión Nacional de Costos, Precios y Salarios (CONACOPRESA) replaced it. Most items were technically excluded from price controls by virtue of their exclusion from the new list of items deemed to be of prime necessity (published November 2, 1984), but Decree 327, dated October 31, 1984, provides that all producers or importers of goods and services must notify the Ministry of Development (Fomento) at least 60 days in advance of any proposed price increase. There is the inherent threat that if the proposed increase should be considered too high, the product or service in question will be added to the prime necessity list subject to strict price controls.

VII. STAMP TAX

Effective December 1, 1984, new fees will be charged under the Stamp Tax Law for a variety of governmental services. These services range from the authorization of visas, the registration of trademarks, the granting of import permits, the issuance of SIEX approvals, and the issuance of certified copies, to the increase in the exit tax at airports.

VII. LABOR LAW

There have been several interesting decisions recently involving labor law. In the *TAP* case, the appellate court limited the cal-

culuation of labor benefits of an expatriate employee to his years in Venezuela instead of permitting the link-up of prior service, which had been the norm in such cases. In the *Taime* case, an appellate court held that the Labor Tripartite Commission did not have the authority to order the re-employment of those employees who had resigned on the alleged ground of indirect discharge due to reduction of employee benefits.

By Decree No. 328, published November 7, 1984, the minimum daily wage of agricultural workers was raised to Bs. 40, exclusive of any benefits in kind that the worker might receive.

VIII. FOREIGN PARTICIPATION IN FINANCIAL LEASING COMPANIES

Financial leasing companies, originally required to taper down to a 20 percent foreign participation by September 1984, were given until January 31, 1985 to comply with the requirements of Decree 1611 of 1982.

X. TAXES

The expiration date of various tax exoneration decrees promulgated prior to the effective date of the new general tax code is still undecided. The Venezuelan income tax administration advises that the five-year limitation period runs from the original date of the decree rather than from the date the *Codigo Tributario* went into effect (February 1983). If this interpretation is upheld, many of the interest payments presently being paid to foreign banks under Decree 96 may subsequently be held subject to taxation by the Venezuelan authorities. Similarly, some of the public sector interest currently being paid may not be tax-free. Clarification of this point by new legislation is required.

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